

### ***REMARKS***

Claim 25 is new. No new subject matter is added. Claims 1-6, 9-20, and 25 are now pending in the application. Reconsideration and allowance of the pending claims is requested in light of the following remarks.

#### ***Claim Rejections - 35 U.S.C. § 102***

Claims 1-6 and 9-20 were rejected under 35 USC 102(e) as being anticipated by US 6,292,834 to Ravi et al. ("Ravi"). The applicant respectfully disagrees. In order to anticipate a claim, a single reference must show the identical invention in as complete detail as contained in the claim. MPEP 2131.

Claim 1 recites "a regular path for transmitting data received from a source at a regular rate" and "a burst path for transmitting data received from the source at a burst rate higher than the regular rate before playout at the client distinct from the regular path at least in part." The Office action alleges at page 2 that the recited regular path is disclosed by Ravi at column 6, lines 32-47 and page 3 that the recited burst path is disclosed by Ravi at column 7, lines 35-55.

However, it appears that column 7, lines 35-55 of Ravi are descriptions of the flowcharts illustrated in FIGS. 6A and 6B (column 7, lines 35-36). There is no mention of a server burst path in this identified portion of Ravi nor does the identified portion of Ravi indicate in any way that a server burst path exists that is distinct at least in part from the server regular path that is allegedly disclosed by Ravi at column 6, lines 32-47. For at least this reason, Ravi does not anticipate claim 1 because it fails to show the identical invention in as complete detail as contained in the claim. Claims 2-6 inherently contain the features of claim 1, and Ravi fails to anticipate claims 2-6 for at least the same reason as claim 1.

Furthermore, claim 1 is directed to "[a] server for transmitting data over a network to a client." Of the three structural diagrams found in Ravi (FIGS. 1-3) only FIGS. 2 and 3 disclose a computer network 290, the rest of the figures are flowcharts that describe methods. FIG. 2 of Ravi shows a production station 210, a stream server 220, and web servers 230, which are connected to a client computer 240 through the computer network 290. Ravi fails to disclose that any one of the production station 210, stream server 220, or web servers 230 have all the various elements of a server as required by claim 1. Ravi does give additional details in FIG. 3 regarding the structure of the client computer 240, but this cannot be "a server for transmitting data over a network to a client" as recited in claim 1. For this

additional reason, Ravi does not anticipate claim 1 because it fails to show the identical invention in as complete detail as contained in the claim.

Similar to claim 1, claim 9 is directed towards a server, the server including “means for receiving a first portion of the streaming media from a source along a first path” and “means for receiving a second portion of the streaming media from the source prior to transmission to the client along a second path distinct from the first path at least in part.” Thus, for at least the same reasons presented above for claim 1, Ravi fails to anticipate claim 9. Ravi fails to anticipate claims 10-14 at least because these claims depend from claim 9 and inherently contain the features of claim 9.

Furthermore, the applicant has invoked means-plus-function claim language in claim 9, and the Office action does not provide a *prima facie* case of equivalence. See, e.g., MPEP 2183 (“the examiner should provide an explanation and rationale in the Office action as to why the prior art element is an equivalent”). The Office action merely restates the claim language, then identifies portions of Ravi that allegedly correspond to the recited features, providing no explanation or rationale as to why the prior art element is equivalent.

Claim 15 is a method claim, and it recites features that are similar to some found in claims 1 and 9. In particular, claim 15 recites “receiving a first portion of the streaming media from a source along a first path of the server” and “receiving a second portion of the streaming media from the source prior to transmission to the client along a second path of the server distinct from the first path at least in part.”

As was explained above, Ravi fails to disclose a first path of the server and a second path of the server that is distinct from the first path at least in part. For at least this reason, Ravi fails to anticipate claim 15. Claims 16-20 inherently contain the features of claim 15, consequently Ravi fails to anticipate claims 16-20 for at least the same reason as claim 15.

#### ***New Claim 25***

New dependent claim 25, which depends from claim 1, is added. No new subject matter is present. Ravi does not anticipate claim 25 at least because the claim inherently contains the features of claim 1.

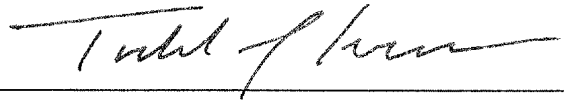
***Conclusion***

No new matter has been added by this amendment. The prior art made of record but not relied upon has been reviewed and is not deemed pertinent to the Applicants' disclosure. Allowance of all pending claims is requested. Please telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

**Customer No. 20575**

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

A handwritten signature in black ink, appearing to read "Todd J. Iverson", written over a horizontal line.

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